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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/005,953	11/02/2001	Roy W. Mattson JR.	RM449b	2927

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EXAMINER

FETSUGA, ROBERT M

ART UNIT

PAPER NUMBER

3751

DATE MAILED: 08/21/2003

14

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/005,953	MATTSON ET AL.	
	Examiner Robert M. Fetsuga	Art Unit 3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 19 June 2003.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 23-30,36,37,50 and 64-69 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) 23-30,36,37,50 and 65 is/are allowed.
- 6) Claim(s) 64 and 66-69 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 02 November 2001 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on 19 June 2003 is: a) approved b) disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
- 4) Interview Summary (PTO-413) Paper No(s) _____ .
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____ .

Art Unit: 3751

1. The amendment to the paragraph starting on "page 22 line 4" has not been entered as being inconsistent with the specification.
2. The proposed drawing correction filed on June 19, 2003 has been approved.
3. The attempt to incorporate subject matter into this application by reference to U.S. patents at page 1 is improper because no particular subject matter has been identified in the specification. See MPEP 608.01(p) (I).
4. The drawings are objected to because reference numeral "1804" is missing from Fig. 18 (paragraph starting at page 21 line 20), reference numeral "1894" is missing from Fig. 20 (paragraph starting at page 21 line 20), reference numeral "1803" denotes different elements in Fig. 21, and reference numeral "1804" denotes different elements between Figs. 21 and 24.. Correction is required.

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the subject matter set forth in claim 66 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Applicant is required to submit a proposed drawing correction in response to this Office action. Any proposal by

Art Unit: 3751

applicant for amendment of the drawings to cure defects must consist of two parts:

- a) A separate letter to the draftsperson in accordance with MPEP 608.02(r); and
- b) A print or pen-and-ink sketch showing changes in red ink in accordance with MPEP 608.02(v).

IMPORTANT NOTE: The filing of new formal drawings to correct the noted defect may be deferred until the application is allowed by the examiner, but the print or pen-and-ink sketch with proposed corrections shown in red ink is required in response to this Office action, and may not be deferred.

5. The disclosure is objected to because of the following informalities: Page 17, line 26 and page 19, lines 8 and 9, reference numerals "30" and "31" denote different elements; paragraph on page 21 starting at line 20, line 3, reference numeral "1803" denotes different elements, lines 3 and 4, reference numeral "1894" denotes different elements, lines 4 and 6, reference numerals "1894" and "1804" denote the same element, and lines 3 and 8, reference numerals "1803" and "2003" denote the same element; and paragraph on page 22 starting at line 4, lines 2 and 3, "distal" and "proximal" should be interchanged, lines 5 and 6, reference numerals "2003" and "1803" denote the

Art Unit: 3751

same element, and lines 6 and 7, reference numeral "1803" denotes different elements.

Appropriate correction is required.

6. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: Proper antecedent basis for the "vertically oriented" language set forth in claims 23, 24, 26, 30, 36, 37, 64 and 65, "pop off connection" set forth in claim 36, "housing means", "faceplate means" and "safety/sanitation port means" set forth in claim 50, "slanted edge" set forth in claim 64, and "shaped ledge" set forth in claims 67-69, could not be found in the specification. Applicant is reminded claim terminology in mechanical cases should appear in the descriptive portion of the specification by reference to the drawing(s).

Applicant lists certain of the noted terms at pages 12-13 of the response filed June 19, 2003, however, such is not present in the specification.

7. Claims 66, 68 and 69 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s),

Art Unit: 3751

at the time the application was filed, had possession of the claimed invention.

The subject matter recited in claim 66 is not found in the originally filed disclosure and is therefore considered to be new matter. Applicant argues at page 12 of the response this subject matter can be found in Patil (U.S 6,283,308). However, "Patil's claim 1" is not found in applicant's original disclosure.

Claim 68 recites, in part, "to enable retention of less than about 10.5 ounces of water" (ln. 8). This subject matter is not found in the originally filed disclosure and is therefore considered to be new matter. Claim 69 includes a similar recitation.

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Art Unit: 3751

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

9. Claims 64 and 67, and claims 68 and 69 as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Watkins.

The Watkins reference discloses a combination comprising: a housing 24 including a mounting surface (part of tub), an input orifice 26 having a faceplate 80, an outlet port/orifice 32, and a slanted edge/shaped ledge (illustrated in Fig. 2); and a filter 10, as claimed.

Applicant argues at page 13 of the response the Watkins filter housing does not drain after use because the spa is always filled with water. The examiner can not agree. The Watkins disclosure has again been reviewed, but no mention is found therein concerning the spa always remaining filled. Furthermore, the bottom wall of the Watkins housing is slanted and would therefore drain water, especially since the faceplate is not watertight as disclosed at page 8, lines 37-39.

Art Unit: 3751

Applicant further argues at page 13 of the response the Watkins filter housing sits above the water line. The examiner can not agree. The Watkins filter housing receives water (pg. 8 ln. 38) and is therefore not above a water line.

Re claims 68 and 69, the Watkins filter housing appears capable of functioning "to enable retention of less than about 10.5 (6.5) ounces of water" in the same sense as with applicant's filter housing.

10. Claims 64 and 67, and claims 68 and 69 as best understood, rejected under 35 U.S.C. 103(a) as being unpatentable over Zars and Watkins.

The Zars reference discloses a combination comprising: a housing 30 including a mounting surface 15, an input orifice (defined by 32,33) having a faceplate 2, and an outlet port/orifice 38. Therefore, Zars teaches all claimed elements except for the orientation of the faceplate, provision of a filter, and the shape of the housing.

Although the faceplate of the Zars housing does not include a vertical orientation, as claimed, attention is directed to the Watkins reference which discloses an analogous housing 24 which further includes a vertically oriented faceplate 80. Therefore, in consideration of Watkins, it would have been obvious to one of ordinary skill in the art to associate a vertical orientation

Art Unit: 3751

with the Zars faceplate in order to enable installation of the housing on a tub side wall.

Although the Zars housing does not include a filter, as claimed, attention is again directed to Watkins which discloses a filter 10. Therefore, in further consideration of Watkins, it would have been obvious to one of ordinary skill in the art to associate a filter with the Zars housing in order to remove impurities from the water.

Although the Zars housing does not include a slanted edge/shaped ledge, as claimed, attention is yet again directed to Watkins which discloses a slanted edge/shaped ledge (pg. 7 lns. 33-36). Therefore, in still further consideration of Watkins, it would have been obvious to one of ordinary skill in the art to associate a slanted edge/shaped ledge with the Zars housing in order to facilitate manufacture.

Re claims 68 and 69, the Zars filter housing appears capable of functioning "to enable retention of less than about 10.5 (6.5) ounces of water" in the same sense as with applicant's filter housing.

11. Claims 23-30, 36, 37, 50 and 65 are allowable.

12. Applicant's remarks have been fully considered and have been previously addressed.

Art Unit: 3751

13. The grounds of rejection have been reconsidered in light of applicant's arguments, but are still deemed to be proper.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

14. Any inquiry concerning this communication should be directed to Robert M. Fetsuga at telephone number 703/308-1506 who can be most easily reached Monday through Thursday.



Robert M. Fetsuga
Primary Examiner
Art Unit 3751